



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1951.

No. 224.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA,  
CAPITAL TRANSIT COMPANY, AND WASHINGTON TRANSIT  
RADIO, INC., Petitioners,

v.

FRANKLIN S. POLLAK and GUY MARTIN, Respondents.

## MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE*.

Radio Cincinnati, Inc., KXOK, Inc. (St. Louis), and KCMO (Kansas City) respectfully move, pursuant to Rule 27, paragraph 9, of the Rules of this Court, for leave as *amici curiae* to file a brief in support of the petition for writ of certiorari in this case. Consent of the petitioners has been received. Consent of the respondents has been requested but has been refused.

The moving parties are corporations operating radio broadcasting stations in Cincinnati, St. Louis and Kansas City. They broadcast radio programs that are received in street cars and buses in those cities, in the same manner that radio programs are received in street cars and buses in the District of Columbia.

Reception of radio programs in street cars and buses in the District of Columbia, according to the decision of the Court of Appeals in this case, constitutes government action which deprives objecting passengers of liberty without due process of law, in violation of the Fifth Amendment. The Court of Appeals so decided, even though the Public Utilities Commission—charged by act of Congress with regulation of service on street cars and buses in the public interest—had conducted a hearing for four days, giving all parties an opportunity to present evidence and be heard, had found that only 3 percent of the passengers were firmly opposed to the programs, and had decided that public convenience and comfort were promoted by the programs.

Manifestly, the issue is novel, unsettled and important, and it is believed that the case should be reviewed by this Court. It is further believed that in principle the decision below is at variance with decisions of this Court relative to constitutional liberties as well as with decisions relative to regulation of service furnished by public utilities, and that the case should be reviewed on this ground also.

The interest of the moving parties in this case lies in the fact that the radio programs provided by them for reception in street cars and buses in Cincinnati, St. Louis and Kansas City are the same in general content and also in operation and effect as the radio programs received in street cars and buses in the District of Columbia. By reason of that fact the moving parties have a strong concern in the outcome of this case, the decision of which by this Court will have direct implications on their right to continue to provide radio programs for street cars and buses in the cities served by them.

In the present case the constitutional issue involves the Fifth Amendment—whether objecting passengers are

deprived of liberty by action of the Federal government. In the situation of the moving parties the constitutional question would involve the Fourteenth Amendment—whether an objecting passenger would be deprived of liberty by action of state governments. The applicable portions of the two Amendments on deprivation of liberty are similar, and the questions are closely related. The moving parties, it is submitted, should be given an opportunity to develop to the Court the important bearing which a decision on the constitutional issues involved in this case will have on their rights and on the rights of millions of bus riders throughout the country. The question has not been emphasized by the petitioners since they are primarily concerned only with rights and interests of District of Columbia bus riders under the Fifth Amendment.

WHEREFORE, it is respectfully submitted that this motion for leave to file a brief as *amici curiae* should be granted.

Respectfully submitted,

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KXOK, INC. and KCMO BROADCAST-  
ING COMPANY.